

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL MICHAEL LAMB,

Defendant-Appellant.

UNPUBLISHED

January 24, 2012

No. 302024

Macomb Circuit Court

LC No. 2010-001635-FH

Before: GLEICHER, P.J., and CAVANAGH and O’CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction for first-degree home invasion, MCL 750.110a(2). We affirm.

On appeal, defendant argues that the prosecution failed to present legally sufficient evidence from which a reasonable jury could convict him of first-degree home invasion. We disagree. A challenge to the sufficiency of the evidence is reviewed de novo, “in the light most favorable to the prosecution to determine whether any rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt.” *People v Lundy*, 467 Mich 254, 258; 650 NW2d 332 (2002); *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

The elements of first-degree home invasion are: (1) the defendant either breaks and enters a dwelling or enters a dwelling without permission, (2) the defendant either intends when entering to commit a felony, larceny, or assault in the dwelling or at any time while entering, present in, or exiting the dwelling commits a felony, larceny, or assault, and (3) while the defendant is entering, present in, or exiting the dwelling either is armed with a dangerous weapon or another person is lawfully present in the dwelling. *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010).

The prosecution relied on testimony from a witness, defendant’s grandmother, who was the resident of the dwelling defendant entered. The witness was awakened when defendant came into her home through an unlocked kitchen window. She reported to the police that \$80 was missing from her purse moments after defendant left. Defendant was apprehended approximately two hours later, found in the passenger seat of a vehicle containing narcotics and narcotic equipment, and had \$7.25 in his possession. Defendant contends that the prosecution failed to provide sufficient evidence both that he lacked permission to enter the residence and

that he had an intent to commit a larceny when entering or that he took \$80 from the residence once inside.

After reviewing the record, we conclude there was legally sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that defendant entered the residence without permission, intended to commit a larceny when entering or did commit a larceny once inside the residence, and that a person was lawfully present in the dwelling. The witness clearly testified that while defendant had permission to enter her home if she heard him knocking at the door, he did not have permission to enter through the window that morning. Likewise, both police officers who took her statement that day and the next testified that at no time did she indicate defendant had permission to enter her home in that manner or at that time. Nothing in the record controverts such testimony.

As for the evidence regarding defendant's intent when entering the dwelling, "the requisite intent to commit larceny may be inferred from the nature, time and place of [the defendant's] acts before and during the attempted breaking and entering." *People v Hughes*, 27 Mich App 221, 222; 183 NW2d 383 (1970). Defendant opened a kitchen window at 6:30 a.m., removed a ceramic decoration that was in the way, and entered silently until presumably landing with the "thump" that alerted the witness to his presence. The witness reported seeing defendant rifling through her purse, and when she left him alone in the kitchen, he fled, leaving the side door ajar. Thus, the time and manner of his entry, the witness' report of seeing him rifling through her purse, and his hurried flight from the residence could lead a reasonable jury to conclude that this behavior was indicative of an intent to commit a larceny when entering the dwelling.

Furthermore, a rational jury could conclude that even if defendant did not have the requisite intent to commit a larceny when entering the witness' home, he did commit the larceny while present in the house. Despite defense counsel's numerous attempts to rattle her certainty, the witness repeatedly stated she was "absolutely" certain that the money was in her purse before defendant entered her residence, and was missing mere moments after he left. Additionally, the prosecution was able to provide a reasonable explanation for why defendant did not have \$80 on his person when arrested approximately two hours after leaving the residence, namely, narcotics. Considering that "circumstantial evidence and reasonable inferences drawn from the evidence may be sufficient to prove the elements of a crime," *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (citations omitted), a rational jury could conclude the prosecution met its burden of proving defendant committed larceny.

Neither party disputes the last element—that a person was lawfully present in the dwelling—so a reasonable jury could easily conclude this element satisfied. Accordingly, a rational trier of fact could have found the elements of first-degree home invasion were proven beyond a reasonable doubt.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell